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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/780,669	02/09/2001	Jiangchun Xu	210121.427C24	8247

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EXAMINER
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HELMS, LARRY RONALD

ART UNIT	PAPER NUMBER
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1642

DATE MAILED: 02/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/780,669

Applicant(s)

XU ET AL.

Examiner

Larry R. Helms

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 18-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 18-22 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Group VI, claim 11 in the paper file 12/2/03 is acknowledged. Claims 1-17 were canceled and new claims 18-22 were added. As such the restriction requirement dated 10/2/03 is vacated in view of the new restriction requirement.
2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 18-22 in part, drawn to a composition comprising a carrier or immunostimulants and an antibody that binds to amino acids 120-139 of SEQ ID NO:114, classified in class 530, subclass 388.1.
  - II. Claims 18-22 in part, drawn to a composition comprising a carrier or immunostimulants and an antibody that binds to amino acids 151-169 of SEQ ID NO:114, classified in class 536, subclass 388.1.
  - III. Claims 18-22 in part, drawn to a composition comprising a carrier or immunostimulants and an antibody that binds to amino acids 165-169 of SEQ ID NO:114, classified in class 536, subclass 388.1.
3. The inventions are distinct, each from the other because of the following reasons:

Inventions of Groups I-III represent separate and distinct products which bind different epitopes in an antigen. The antibody of Group I binds residues 120-139 of SEQ ID NO:114 while the antibody of Group II binds residues 151-169 of SEQ ID

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NO:114 and Group III antibody binds residues 165-184 of SEQ ID NO:114. The antibodies are distinct because each antibody binds a distinct epitope in SEQ ID NO:114 and the antibodies would not bind to the same epitopes. The examination of all groups would require different searches (search for each separate region in SEQ ID NO:114) in the U.S. Patent shoes and the scientific literature and would require the consideration of different patentability issues. Thus the inventions I-III and are patentably distinct.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter and different classifications, restriction for examination purposes as indicated is proper.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(l).

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Larry R. Helms, Ph.D, whose telephone number is (571) 272-0832. The examiner can normally be reached on Monday through Friday from 6:30 am to 4:00 pm, with alternate Fridays off. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyler, can be reached on (571) 272-0871.


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7. Papers related to this application may be submitted to Group 1600 by facsimile transmission. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The Fax Center telephone number is (703) 308-4242.

Respectfully,

Larry R. Helms Ph.D.

571-272-0832



LARRY R. HELMS, PH.D.  
PRIMARY EXAMINER